IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WA.No. 2277 of 2006()

{IN W.P.(C)NO.17804/2006 OF THIS COURT}
.....

APPELLANT: PETITIONER:

C.K.SHAJI,
S/O.LATE C.N.KRISHNAN, 'B' GRADE KAZHAGAM
(CLEANING EMPLOYEE),
SREE SUBRAMANYA SWAMY TEMPLE,
ELAMKUNNAPUZHA AND CHOONEZHATH HOUSE,
KUNDAMKULAM P.O.,METHALA, KODUNGALLOORE,
PIN-680 669, TRICHUR DISTRICT.

BY ADV. SRI.B.RAMACHANDRAN

RESPONDENTS: RESPONDENTS:
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1. COCHIN DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY,
DEVASWOM BOARD OFFICE, TRICHUR.

2. ASSISTANT COMMISSIONER,
COCHIN DEVASWOM BOARD OFFICE,
TRIPUNITHURA.

BY ADV.SRI.M.RAMESH CHANDER - STANDING COUNSEL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ALONG WITH WA NO.2316 OF 2006 ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

W.A.No.2277 & 2316 of 2006

Dated this the 18th day of December, 2006.

JUDGMENT

Abdul Gafoor, J.

The appellant/petitioner in W.A.No.2277/06 is aggrieved by the judgment of the learned single Judge whereby, it is directed that he could be posted to 'C' Grade temple as 'kazhakam' . In implementation of the said judgment, Exts.P10 and P11 orders marked in W.P.(C)No.28853/06 were passed, posting him to a 'C' Grade temple on transfer. The challenge to the said orders did not succeed. Therefore, W.A.No.2316/06.

2. The first question to be examined in these cases is whether he is entitled to the scale of pay of Rs.2400-3520, while working as a 'kazhakam'. The contention of the appellant is that he was appointed as 'kazhakam' in a 'B' Grade temple pursuant to the notification issued, Ext.P1 marked in W.P.(C)

No.28853/06. The appointment order is Ext.P3. Exts.P1 and P3 reveal that the appointment was on a scale of pay of Rs.1050-1650. Later, that was revised as per Ext.P8 to Rs.2400-3520. A person appointed in a particular pay scale cannot be posted on or given lesser scale of pay than that notified or made mention of in the appointment order. Therefore, the judgment impugned in W.A.No.2277/06, to the extent it enables the 1st respondent/Cochin Devaswom Board to post him in 'C' Grade temple is not justified, it is contended by the appellant.

3. This contention is countered by the standing counsel for the first respondent stating that on initial posting as 'kazhakam', one could be posted only in a 'C' Grade Temple having a lesser scale of pay of Rs.1000+D.A., which was enhanced to Rs.2000+D.A. The posting of the appellant on initial

appointment as per Ext.P3 was an error. His juniors are working in 'C' Grade temples. Therefore, he cannot be granted a higher scale of pay. In this regard, the order passed in Ext.R1(a) marked in W.P.(C)No.17804/06 is much relied on. It is submitted that paragraph 5 of the said order enables an employee in Category 3(b) in appendix B to the said order including "kazhakam " being posted on a scale of pay of Rs.2000+D.A., as revised. Therefore, there was nothing unjust in the direction issued by the learned single Judge in the judgment in W.P.(C)No.17804/06 and in posting him so as per Exts.P10 and P11 marked in the other writ petition.

4. Ext.P2 in W.P.(C)No.17804/06 reveals that the appellant was selected and appointed in the scale of pay of Rs.1050-20-1250-25-1650. This scale of pay stands revised to Rs.2400-3520 admittedly

with effect from 1.6.2005. The appointment as per Ext.P3 was effected on 15.12.2001. The order Ext.R1(a) relied on by the standing counsel for the Board, which enables the initial posting of the incumbent in the 'C' Grade temple with a salary of Rs.2000+D.A (revised as provided in Appendix B. Ext.R1(a) is dated 12.5.2006, passed far later than the appointment of the appellant in the scale of pay of Rs.1050-1650, which stands revised to Rs.2400-3520. Therefore, Ext.R1(a) cannot, in any way, be pressed into service by the Board to reduce the scale of pay of the appellant. This aspect has never been examined by the learned single Judge while pronouncing the judgment in W.P.(C)No.17804/06. Necessarily, the direction contained in the judgment shall have to be set aside. We do so. Consequently, the orders Exts.P10 and P11 marked in W.P.(C) No.28853/06 to the extent it reduces the scale of

pay of the appellant is also liable to be set aside. Hence, Exts.P10 and P11 are also set aside.

5. But the petitioner cannot be aggrieved by the transfer, as the board, in the exigency of service, can transfer him to any temple of its choice.

6. Necessarily, it is made clear that his salary shall be fixed in the scale of pay of Rs.2400-3520.

Writ appeals are disposed of accordingly.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

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PS to Judge

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

W.A.No.2277 & 2316 of 2006

JUDGMENT

18th Decmber, 2006.